

Handwritten signature/initials

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FILED

NOV 23 2004

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

MOI KEOPASEUTH,
a/k/a Tom Moi,

Defendant.

No. CR 02 0383 MJJ

PLEA AGREEMENT

I, MOI KEOPASEUTH a/k/a Tom Moi (hereinafter referred to as Moi Keopaseuth), and the United States Attorney's Office for the Northern District of California (hereafter "the government") enter into this written plea agreement (the "Agreement") pursuant to Rules 11(c)(1)(A) and 11(c)(1)(C) of the Federal Rules of Criminal Procedure:

THE DEFENDANT'S PROMISES

1. I agree to plead guilty to COUNT ONE of the captioned indictment charging me with Conspiracy, in violation of 18 U.S.C. § 371. I agree that the elements of the offense and the maximum penalties are as follows:

////

PLEA AGREEMENT
CR 02 - 0383 MJJ
[KEOPASEUTH]

1 A. **ELEMENTS**

- 2 i. First, beginning on or about 1999, and ending on or about 2002,
3 there was an agreement between two or more persons to commit at
4 least one crime as charged in the indictment; and,
5 ii. Second, the defendant became a member of the conspiracy
6 knowing of at least one of its objects and intending to help
7 accomplish it; and,
8 iii. Third, one of the members of the conspiracy performed at least one
9 overt act for the purpose of carrying out the conspiracy, with all of
10 the jury agreeing on a particular overt act that it found was
11 committed.

12 B. **PENALTIES**

- 13 i. Maximum prison sentence 5 years
14 ii. Maximum fine \$250,000
15 iii. Maximum supervised release term 3 years
16 iv. Mandatory special assessment \$100
17 v. Restitution TBD

18 2. I agree that I am guilty of the offense to which I will plead guilty, and I agree that
19 the following facts are true:

20 A. **COUNT ONE**

21 Between in or about 2001 and in or about May 2002, I agreed with others named in this
22 Indictment to use information obtained from United States mail stolen by the others named in the
23 Indictment from locations around the Bay Area, including locations within the Northern District
24 of California, in order to purchase good and services fraudulently.

25 Specifically, I was part of a conspiracy to use stolen mail contents to book hotel rooms,
26 purchase a car, and buy thousands of dollars of merchandise from Office Depot in the
27 Minneapolis, Minnesota area. I usually did this by using fraudulently acquired credit card
28 information over the telephone or via the internet to purchase goods and services. I sometimes

1 personally picked up equipment that I knew had been acquired or obtained fraudulently by the
2 telephone or via the internet.

3 It was part of this conspiracy that:

- 4 • I possessed stolen mail in furtherance of the conspiracy to utilize that mail
5 in making fraudulent purchases. Specifically, on or about September 7,
6 2001, I possessed stolen mail.
- 7 • I used credit card information obtained from the mail stolen by others to
8 fraudulently book hotel rooms and purchase computer equipment.
- 9 • I purchased at least one item using a fraudulent check in the amount of
10 \$1,500 to assist in the purchase of a car. On or about September 2, 2001, I
11 wrote a check in that amount, as partial payment for a used BMW
12 automobile; the check was made payable to Jeremy Dewar. I knew the
13 check was either fraudulently altered or generated to add my name as a
14 signee.
- 15 • Between in or about December 2000 and in or about September 2001, I
16 booked hotel rooms through the Hotel Reservations Network in the
17 Minneapolis, Minnesota area. I sometimes booked the rooms and used the
18 room myself.
- 19 • On or about January 8, 2002, I picked up merchandise from Office Depot
20 in Eagan, Minnesota, knowing that the merchandise had been ordered
21 fraudulently using stolen credit card information. The merchandise I
22 picked up included an HP PDA, a Palm Pilot, and a Palm Pilot case. The
23 total value of the merchandise was approximately \$1,087.

24 At all times during the course of my involvement in the conspiracy, I knew that the
25 purchase of these items and services had been enabled by two or more people who were actively
26 stealing mail in order to use credit card and check information fraudulently. My tacit agreement
27 with the other conspirators was to assist in the use of that information in the Minneapolis area,
28 often but not exclusively for my own benefit.

1 It was also part of the conspiracy, as I understood it, that:

- 2 • The co-conspirators and I would gather to exchange information relating
- 3 to the identities of third party victims, including but not limited to Social
- 4 Security numbers, bank account numbers, and credit card numbers which I
- 5 would use to book hotel rooms fraudulently.

6 I was not, however, personally involved in the day-to-day activities of stealing United
7 States mail committed by the other members of the conspiracy identified in the Indictment,
8 including the manner in which the mail was stolen and/or the means by which the other co-
9 conspirators obtained, acquired, or made counterfeit postal keys or locks.

10 **B. RELEVANT CONDUCT**

11 As part of and in furtherance of the conspiracy, the other defendants and I committed
12 numerous overt acts, both legal and illegal. All of the conspirators, including me, benefitted
13 directly and indirectly, from the actions taken in the furtherance of our conspiracy. By our
14 actions, we created substantial, actual economic loss to more than 50 victims, both individuals
15 and businesses, which amounts to an actual and/or intended loss of ~~more than~~ ^{more than} \$70,000. *(AU parties agree)*
BB

16 3. I agree to give up all rights that I would have if I chose to proceed to trial,
17 including the rights to a jury trial with the assistance of an attorney; to confront and cross-
18 examine government witnesses; to remain silent or testify; to move to suppress evidence or raise
19 any other Fourth or Fifth Amendment claims; to any further discovery from the government; and
20 to pursue any affirmative defenses and present evidence.

21 4. I agree to give up my right to appeal my conviction, the judgment, and orders of
22 the Court. I also agree to waive any right I may have to appeal my sentence.

23 5. I agree not to file any collateral attack on my conviction or sentence, including a
24 petition under 28 U.S.C. §2255, at any time in the future after I am sentenced, except for a claim
25 that my constitutional right to the effective assistance of counsel was violated. To the extent
26 that I have a right to have facts that are used to determine the sentence (including any Sentencing
27 Guideline factors and any departure grounds) charged in the indictment by the grand jury and
28 found by a jury at trial beyond a reasonable doubt (*see Blakely v. Washington*, 124 S. Ct. 2531

(2004)), I waive those rights and agree that the Court will find the facts that determine my sentence under the applicable lesser standard of proof determined by the guidelines and case law prior to *Blakely*.

6. I agree not to ask the Court to withdraw my guilty plea at any time after it is entered, provided I fully accept responsibility within the meaning of U.S.S.G. § 3E1.1. I may withdraw my guilty plea if I meet the requirements of U.S.S.G. § 3E1.1, but the Court then declines to accept the term of imprisonment agreed to by the parties. I also agree that the government may withdraw from this agreement if the Court does not accept the agreed upon sentence set out below.

7. I agree that the Sentencing Guidelines should be calculated as follows, and that I will not ask for any other adjustment to or reduction in the offense level or for a downward departure of any kind:

a.	Base Offense Level (U.S.S.G. § 2B1.1):	6
b.	Specific offense characteristics:	
i.	Loss (U.S.S.G. § 2B1.1(b)(1)(E): In Excess of \$70,000	+8
ii.	Victims (U.S.S.G. § 2B1.1(b)(2)(B): More than 50 victims	+4
c.	Acceptance of responsibility: (If I meet the requirements of U.S.S.G. § 3E1.1)	-3
d.	Adjusted offense level	15

8. I agree that an appropriate disposition of this case is as follows: 30 months of imprisonment, 3 years of supervised release with appropriate conditions to be fixed by the Court following input from the parties and the Probation Department prior to sentencing, a fine, if any, to be determined by the Court following input from the parties and the Probation Department prior to sentencing, and \$100 special assessment and restitution as determined by the Court following input from the parties and the Probation Department prior to sentencing. The government will agree to recommend to the Bureau of Prisons that I be admitted into the Bureau

1 of Prisons' "boot camp" program as well as its inmate drug treatment program. I agree however
2 that this agreement may be altered, as to the imposition of a fine, pending final review of my
3 financial records and resources by the U.S. Probation Office.

4 In return for the government's promises set out below, I agree that I will make a good
5 faith effort to pay any restitution I am ordered to pay, but no more than \$54,000 of restitution
6 may be imposed by the Court. Before or after sentencing, I will, upon request of the Court, the
7 government, or the U.S. Probation Office, provide accurate and complete financial information,
8 submit sworn statements and give depositions under oath concerning my assets and my ability to
9 pay, surrender assets I obtained as a result of my crimes, and release funds and property under my
10 control in order to pay any restitution. I agree to pay the special assessment at the time of
11 sentencing.

12 9. I agree not to commit or attempt to commit any crimes before sentence is imposed
13 or before I surrender to serve my sentence. I also agree not to intentionally provide false
14 information to the Court, the Probation Office, Pretrial Services, or the government; or fail to
15 comply with any of the other promises I have made in this Agreement. I agree not to have any
16 contact with any victims or witnesses in this case, either directly or indirectly, before and after I
17 am sentenced. This includes, but is not limited to, personal contact; telephone, mail, or
18 electronic mail contact; or any other written form of communication; and includes any harassing,
19 annoying, or intimidating conduct by me directed to any victims or witnesses. I agree that the
20 Court should include this agreement as a condition of my supervised release term. I agree that, if
21 I fail to comply with any promises I have made in this Agreement, then the government will be
22 released from all of its promises below, but I will not be released from my guilty plea.

23 10. I agree that this Agreement contains all of the promises and agreements between
24 the government and me, and I will not claim otherwise in the future.

25 11. I agree that this Agreement binds the U.S. Attorney's Office for the Northern
26 District of California only, and does not bind any other federal, state, or local agency.

27 **THE GOVERNMENT'S PROMISES**

28 12. The government agrees to move to dismiss any open charges pending against the

1 defendant in the captioned indictment at the time of sentencing.

2 13. The government agrees not to file or seek any additional charges against the
3 defendant that could be filed as a result of the investigation that led to the pending indictment.

4 14. Based on the information now known to it, the government will not oppose a
5 downward adjustment of three levels for acceptance of responsibility under U.S.S.G. § 3E1.1, as
6 reflected in the calculations in paragraphs 7-8 above, unless the defendant violates the agreement
7 as set forth in paragraph 9 above or fails to accept responsibility. The government also agrees to
8 recommend, based on the defendant's compliance with the terms of this agreement, to
9 recommend the defendant's placement in the Bureau of Prisons' "boot camp" program along
10 with admission into its inmate drug treatment program.

11 **THE DEFENDANT'S AFFIRMATIONS**

12 15. I confirm that I have had adequate time to discuss this case, the evidence, and this
13 Agreement with my attorney, and that he has provided me with all the legal advice that I
14 requested.

15 16. I confirm that while I considered signing this Agreement, and at the time I signed
16 it, I was not under the influence of any alcohol, drug, or medicine.

17 17. I confirm that my decision to enter a guilty plea is made knowing the charges that
18 have been brought against me, any possible defenses, and the benefits and possible detriments of
19 proceeding to trial. I also confirm that my decision to plead guilty is made voluntarily, and no
20 one coerced or threatened me to enter into this agreement.

21 18. I confirm that I read this entire plea agreement in the presence of my attorney.

22
23 DEFENDANT

24
25 Dated: 11/23/09

26 
27 MOI KEOPASEUTH
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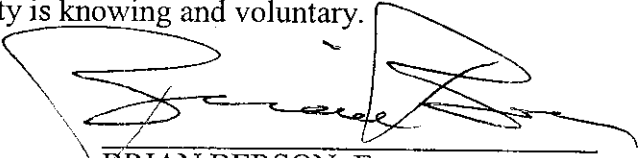
1
2 KEVIN V. RYAN
United States Attorney

3
4 Dated: 11/23/2004

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TIMOTHY J. LUCEY
Assistant United States Attorney

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8 I have fully explained to my client all the rights that a criminal defendant has and
9 all the terms of this Agreement. In my opinion, my client understands all the terms of this
10 Agreement and all the rights he is giving up by pleading guilty, and, based on the information
11 now known to me, his decision to plead guilty is knowing and voluntary.

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13 Dated: 11/23/04

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BRIAN BERSON, Esq.
Attorney for Defendant Moi Keopaseuth

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PLEA AGREEMENT
CR 02 - 0383 MJJ
[KEOPASEUTH]

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

USA,

Plaintiff,

v.

Moi Keopaseuth,

Defendant.

Case Number: CR02-0383 MJJ

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

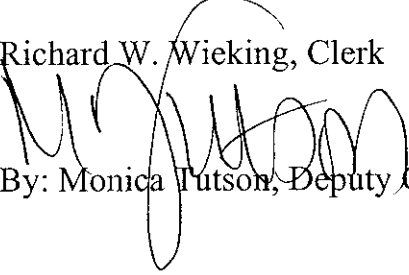
That on November 23, 2004, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Brian P. Berson
235 Montgomery Street
Suite 1875
San Francisco, CA 94104

Tim Lucey
U.S. Attorney's Office
450 Golden Gate Ave
San Francisco, CA 94102

Dated: November 23, 2004

Richard W. Wieking, Clerk


By: Monica Tutson, Deputy Clerk